APPENDIX NO. 1

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA.

CASE NO.: 71149

CHARLES FRIEND,

Plaintiff,

vs.

IRWIN R. LIPPMAN, THOMAS A. WADDELL and THOMAS D. O'MALLEY, JR., individually and as Insurance Commissioner and Treasurer of Florida, and ROYAL INDEMNITY COMPANY, a foreign corporation,

Defendants.

DOCKETED
12-17-71
FLORIDA ATTORNEY GENERAL

COMPLAINT

The plaintiff sues the defendants and alleges:

COUNT ONE

1. The plaintiff and the defendants, LIPPMAN, WADDELL and O'MALLEY, are residents of Leon County, Florida. The defendant, ROYAL INDEMNITY COMPANY, is a New York Corporation doing business in Florida.

2. During 1970 and January, 1971, the plaintiff was Director of the Division of Rehabilitation and Liquidation of the Florida Department of Insurance.

3. During 1970 and January, 1971, the defendant LIPPMAN was Director of the Division of Personnel of the Florida Insurance Department.

4. During 1970 and January, 1971, the defendant WADDELL was General Counsel of the Florida Department of Insurance and, as such, was the plaintiff's immediate superior. The defendant WADDELL was also the plaintiff's immediate superior during the last eight months (May through December) of 1969.

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5. On November 3, 1970, the defendant O'MALLEY was elected Insurance Commissioner and Treasurer of Florida, and on January 5, 1971, he was inaugurated as such, and he has continued as such to date.

6. Between November 3, 1970, and January 31, 1971, the defendant LIPPMAN

a) without just cause intentionally falsely informed against the plaintiff to the defendant O'MALLEY, causing the defendant O'MALLEY to discharge the plaintiff from his employment; and/or

b) without just cause, deliberately and knowingly, ordered, instructed and requested plaintiff to violate and to participate in the violation of statutes, court orders, rules and regulations (or all of the foregoing) of the State of Florida and to improperly falsify official records of the State of Florida; and/or

c) informed the defendant O'MALLEY that the plaintiff refused to countenance or knowingly participate in deliberate violations of court orders, statutes or rules and regulations (or all of them) of the State of Florida; and that the plaintiff refused to countenance or knowingly participate in the deliberate and improper falsification of official records,

causing the defendant O'MALLEY to discharge the plaintiff from his employment.

7. As a result of such acts of the defendant LIPPMAN, the plaintiff has lost and will lose earnings, retirement benefits and sick and annual leave benefits.

COUNT TWO

8. The plaintiff realleges the allegations in paragraphs 1 through 5 of Count One.

9. The plaintiff alleges against the defendant WADDELL the same allegations asserted against the defendant LIPPMAN in paragraphs 6 and 7 of Count One.

COUNT THREE

10. The plaintiff realleges the allegations in paragraphs 1 through 5 of Count One.

11. As a result of the acts of the defendants LIPPMAN and WADDELL, set forth in Counts One and Two, the defendant O'MALLEY on an unreasonably arbitrary basis on January 18, 1971, discharged the plaintiff from his employment, which discharge became effective on January 31, 1971.

12. The plaintiff alleges against the defendant O'MALLEY the same allegations asserted against the defendant LIPPMAN in paragraph 7 of Count One.

COUNT FOUR

13. The plaintiff realleges the allegations contained in paragraphs 1 through 5 of Count One.

14. Between November 3, 1970, and January 18, 1971, inclusive, the defendants LIPPMAN and WADDELL intentionally conspired with each other to wrongfully procure the plaintiff's discharge from his employment, and in furtherance of that conspiracy performed those acts alleged in paragraph 6 a), b), and c), thereby causing the defendant O'MALLEY to discharge the plaintiff from his employment.

15. As a result of such acts of the defendants LIPPMAN and WADDELL in combination, the plaintiff has been damaged as alleged in paragraph 7 above.

COUNT FIVE

16. Plaintiff realleges the allegations contained in paragraphs 1 through 5.

17. Between November 3, 1970, and January 31, 1971, the defendants LIPPMAN, WADDELL and O'MALLEY agreed and conspired and planned to expend certain public funds or trust funds, contrary to court orders and they each performed acts in furtherance of said plan.

18. Plaintiff was directed to participate in said conspiracy by said defendants, but he refused.

19. Because of plaintiff's refusal to participate in said conspiracy the defendants LIPPMAN and WADDELL took actions as alleged in paragraph 6 of Count One.

20. Because of plaintiff's refusal to participate in said conspiracy, the defendant O'MALLEY took actions as alleged in paragraph 11 of Count Three.

21. The defendants, LIPPMAN, WADDELL and O'MALLEY, conspired to damage the plaintiff in his employment and took the aforesaid acts in furtherance of said conspiracy.

22. As a result of said conspiracy, and as a result of the unlawful and tortious acts, of the said three conspirators, the plaintiff has been damaged as alleged in paragraph 7 of Count One.

COUNT SIX

23. The plaintiff realleges the allegations of paragraphs 1 through 5 of Count One.

24. On or about December 1, 1970, the defendant O'MALLEY bound himself in the penal sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) to the Governor of Florida, the condition of said bond being that he shall faithfully perform the duties of his said office.

25. The defendant, ROYAL INDEMNITY COMPANY (hereafter ROYAL), a foreign corporation, bound itself in like amount as surety upon the aforesaid obligation of the defendant O'MALLEY. A true copy of the written obligation or Bond, executed by the defendants O'MALLEY and ROYAL is attached hereto and marked for identification as Plaintiff's Exhibit I.

26. Said Bond has remained in force and effect at all times since its execution as aforesaid through the filing of this Complaint.

27. Plaintiff realleges all allegations of paragraphs 6 and 7, as to defendants LIPPMAN and WADDELL.

28. Plaintiff realleges all allegations of paragraphs 11 and 12 as to the defendant O'MALLEY.

29. The acts described in paragraphs 6, 11, 14, 17, 18, 19, 20, 21 and 22 were done in the official capacity of the said individual defendants, and/or they were done under the color of office of the said defendants, and/or with the authority of the said offices of said defendants.

30. The acts described in paragraphs 6, 11, 14, 17, 18, 19, 20, 21 and 22 were unfaithful to the office of said defendants. The said acts constitute a breach of public trust by said defendants. Said acts constitute a breach of the condition of said Bond by each of the said individual defendants.

31. As a result of said acts plaintiff has been damaged as alleged in paragraph 7 of Count One.

32. As a result of the aforesaid unlawful and tortious acts of each of the defendants, the surety, ROYAL, has become liable and obligated to plaintiff for his damages as aforesaid.

33. All conditions precedent to bringing suit upon said Bond have been performed by plaintiff.

WHEREFORE, the plaintiff demands judgment against the defendants, and each of them, for compensatory damages in excess of the minimum jurisdictional amount of this Court, and punitive damages in excess of the minimum jurisdictional amount of this Court, and demands trial by jury.

Robert B. Kane

ROBERT B. KANE
Attorney for Plaintiff
604 Midyette-Moor Building
Tallahassee, Florida 32301

APPENDIX No. 2

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA.

CASE NO. 71-1649

CHARLES FRIEND,

Plaintiff,

vs.

JOHN LIPPMAN, et al,

Defendants.

ORDER

This cause came on for hearing and argument upon all pending motions. After hearing the arguments of counsel and upon consideration, it is ORDERED and ADJUDGED as follows:

1. Motion of plaintiff to amend his complaint is granted without objection by the parties;

2. Motion to dismiss for lack of jurisdiction of the person of the defendant, THOMAS D. O'MALLEY, individually, is denied;

3. Motion of defendant, ROYAL INDEMNITY COMPANY, to dismiss for insufficiency of process and service of process is denied by the court after agreement by counsel;

4. The motion of the individual defendants to sever is postponed for hearing at a later date to be set by the court; and

5. Other pending motions are taken under advisement by the court. Plaintiff may file his written memorandum directed to said motions on or before February 14, 1972.

DONE and ORDERED at the Courthouse this 4th day of February, 1972.

Circuit Judge

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

CASE NO. 71-1649

CHARLES FRIEND, :

Plaintiff, :

vs. :

IRWIN LIPPMAN, et al, :

Defendant. :

MOTION TO AMEND COMPLAINT

Plaintiff moves, pursuant to Rule 1.190, for leave to amend his Complaint, and for grounds would show:

1. Plaintiff believes that facts and transactions occurring outside of the times mentioned in his Complaint are material or necessary to perfect his cause of action, and he wishes to have an opportunity to present such evidence;

2. This Court has ruled on January 19, 1972, that plaintiff could not make discovery outside of the times mentioned in his Complaint. Such discovery is or may be necessary to properly present plaintiff's case.

3. Such amendments do not work any substantial change in this cause of action and will not cause surprise or prejudice to the defense.

4. Therefore, plaintiff prays that his Complaint filed on November 24, 1971, be amended as follows:

a) Paragraph No. 6, first line, change by interlineation to read:

"6. Between January 1, 1970, and November 23, 1971, the"

b) Paragraph No. 14, first line, change by interlineation to read:

"14. Between January 1, 1970, and November 23, 1971,"

c) Paragraph No. 16 be changed in its entirety to read as follows:

"17. Between January 1, 1970, and November 23, 1971, the defendants Lippman and Waddell agreed and conspired and planned to expend certain public funds or trust funds, contrary to court orders and contrary to law and they each performed acts in furtherance of said plan. The defendant O'Malley entered into said conspiracy on or after September 8, 1970, and thereafter performed acts in furtherance of said plan."

5. Plaintiff further prays that all references to said numbered paragraphs in the original complaint or thereafter in this suit be construed to refer to the said paragraphs as amended.

Robert B. Kane

ROBERT B. KANE
Attorney for Plaintiff
604 Midyette-Moor Building
Tallahassee, Florida 32301

I CERTIFY THAT A COPY of the foregoing Motion to Amend Complaint was mailed to the following on this 25th day of January, 1972:

Ben H. Dickens, Esquire
703 Tallahassee Bank Building
Tallahassee, Florida 32301

and

J. Lewis Hall, Jr., Esquire
P. O. Drawer 340
Tallahassee, Florida 32302

Robert B. Kane

APPENDIX No 3

POINT II WHETHER THE AMENDED COMPLAINT HAS ALLEGED THE VIOLATION OF A CONSTITUTIONALLY PROTECTED RIGHT OF PLAINTIFF.

Appellant believes that Appellees have misconstrued the obvious meaning of the authorities. The right which was taken from plaintiff was not a contractual or statutory right to employment. It was a constitutional right to be free from threats or retaliation by his superiors for exercising his basic rights. The arguments of opposing counsel seem identical to those advanced in Pred v. Board of Public Instruction, 415 F. 2d 851 (5 CCA-Fla. 1969). That opinion mentions counsel's alleged distinction between a contract being terminated prematurely, and one which has expired not being renewed. The court observed that such argument attempts to dilute a constitutional right to a contractual one. The opinion describes the basis for the cause of action and Judge Brown might just as well have been talking about the facts of the present case:

> " (4) Equally unpersuasive is the related argument that since there is no constitutional right to public employment, school officials only allowed these teacher's contracts to expire, and thus they cannot be liable for any rights protected by Sec. 1983. But in the posture of this case this misconceives the whole thrust of their claim. The right sought to be vindicated is not a contractual one, nor could it be since no right to